



DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 420

[RR85672000, 22XR0680A2, RX.31480001.0040000]

RIN 1006-AA57

Off-Road Vehicle Use; Correction

AGENCY: Bureau of Reclamation, Interior.

ACTION: Correcting amendment.

SUMMARY: We, the Bureau of Reclamation (Reclamation), published a final rule in the Federal Register on October 22, 2020, to add a definition for electric bikes (E-bikes) and exclude E-bikes from the regulatory definition of an off-road vehicle. Since the publication of the final rule, an editorial error was discovered in the definitions section. This action makes the necessary correction to the final rule.

DATES: This correction is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ronnie Baca, Asset Management Division, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225; (303) 445-3257; rbaca@usbr.gov. If you use a telecommunication device for the deaf (TDD), you may call the Federal Relay Service at (800) 877-8339 to contact us.

SUPPLEMENTARY INFORMATION: On August 29, 2019, the Secretary of the Interior signed Secretarial Order 3376 (SO), *Increasing Recreation Opportunities Through the Use of Electric Bikes*, that directed Reclamation and other Department of the Interior (Department) bureaus (Bureau of Land Management, National Park Service, and the U.S. Fish and Wildlife Service) to increase recreation opportunities and expand access on public lands. The SO addressed regulatory uncertainty on how bureaus within

the Department manage recreational opportunities for E-bikes on trails and paths where traditional bikes are allowed. To implement this SO, Reclamation published an amendment to 43 CFR part 420 on October 22, 2020 (85 FR 67294) to add a definition for E-bikes and exclude E-bikes from the regulatory definition of an off-road vehicle where E-bikes are being used on roads and trails where mechanized, non-motorized use is allowed, where E-bikes are not propelled exclusively by a motorized source, and appropriate Reclamation Regional Directors expressly determine through a formal decision that E-bikes should be treated the same as non-motorized bicycles.

In the final rule document 2020-22108, appearing on page 67298, in the third column, in § 420.5(a), “*Off-road vehicle* means any motorized vehicle (including standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term *includes:*” is to be corrected to read “*Off-road vehicle* means any motorized vehicle (including standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term *excludes*”. The intended purpose of the SO was to increase recreation opportunities through the use of E-bikes. This correction allows E-bikes to not be subject to the restrictions set forth in 43 CFR part 420. This exclusion from the definition aligns Reclamation’s regulations with the purpose of the SO and with the other Bureaus’ regulations. To correct the editorial error discovered in the final rule publication, “the term includes” must be revised to “the term excludes” in the definition.

Administrative Procedure

As explained above, this correcting amendment is necessary to correct an editorial error in the final rule. Neither the final rule nor this amendment alters the compliance statements issued in the final rule. Therefore, under these circumstances, we have determined, pursuant to 553(b)(3)(B), that prior notice and opportunity for public

comment are impractical and unnecessary. Public comment could not inform this process in any meaningful way. We have further determined that, under 5 U.S.C. 553(d)(3), the agency has good cause to make this correction effective upon publication, which is to comply with our regulations as soon as practicable.

Compliance with Other Laws, Executive Orders, and Department Policy.

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this correcting amendment is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this correcting amendment in a manner consistent with these requirements.

Regulatory Flexibility Act.

This correcting amendment will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act.

This correcting amendment is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This correcting amendment:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA).

This correcting amendment does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This correcting amendment does not have a significant or unique effect on State, local, or tribal governments or the private sector. The correcting amendment is a technical amendment that corrects an editorial error in a previously published final rule and imposes no requirements on other agencies or governments. A statement containing information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This correcting amendment does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This correcting amendment is not a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, this correcting amendment does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This correcting amendment complies with the requirements of Executive Order 12988. Specifically, this correcting amendment:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (Executive Order 13175 and Departmental Policy).

The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this correcting amendment under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act of 1995.

This correcting amendment does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

National Environmental Policy Act.

This correcting amendment does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the amendment is categorically excluded from NEPA analysis under DOI categorical exclusion, 43 CFR 46.210(i), which covers "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature;

or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case.” This correcting amendment is a technical amendment that corrects an editorial error discovered in the 43 CFR part 420 that published on October 22, 2020 (85 FR 67294).

Pursuant to 43 CFR 46.205(c), Reclamation has reviewed its reliance upon this categorical exclusion against the list of extraordinary circumstances, at 43 CFR 46.215, and has found that none are applicable for this correcting amendment. Therefore, neither an environmental assessment nor an environmental impact statement is required for this correcting amendment.

Effects on the Energy Supply (Executive Order 13211).

This correcting amendment is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This correcting amendment will not have a significant effect on the nation’s energy supply, distribution, or use.

List of Subjects in 43 CFR part 420

E-bikes, Recreation.

For the reasons stated in the preamble, we amend part 420, title 43 of the Code of Federal Regulations, with the following correcting amendment:

PART 420 – OFF-ROAD VEHICLE USE

1. The authority citation for part 420 continues to read as follows:

Authority: 32 Stat. 388 (43 U.S.C. 391 *et seq.*) and acts amendatory thereof and supplementary thereto; E.O. 11644 (37 FR 2877).

2. In § 420.5, revise paragraph (a) introductory text to read as follows:

§ 420.5 Definitions.

* * * * *

(a) *Off-road vehicle* means any motorized vehicle (including standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term excludes:

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Tanya Trujillo
Assistant Secretary
for Water and Science

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